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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

23

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 23

Application Number: 09/525,002
Filing Date: March 14, 2000
Appellant(s): PRZYTULLA, DIETMAR

MAILED
JUL 11 2003
GROUP 3700

Seth A. Watkins
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 2, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

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(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 3-23 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

3,696,962	FEHRES et al.	10-1972
4,177,934	HAMMES et al.	12-1979

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

102 Rejections

Claims 3-14 and 16-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Fehres et al. (Fehres).

Please refer to the color coded Fig.1 and 2 attached as an appendix to this examiner's answer.

For claim 3, Fehres discloses an open top barrel (container 1) having a barrel body (container 1) with an upper end (profiled upper rim 2) defined by an upper barrel edge (profiled upper rim 2) extending circumferentially around said barrel and including a first portion (orange

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portion which is the portion designated by circled numeral 1) extending radially away from said body and having a downwardly facing surface (bottom surface close to reference numeral 2), a second portion (blue portion which is the portion designated by circled numeral 2) extending upwardly from the first portion, with an inner edge (inside edge of orange portion) of the first portion extending radially inward of the entire second portion, and an exterior rib (yellow portion which is the portion designated by circled numeral 3 and ridge 14), **said rib** defining part of said barrel edge and having both an upper surface (top surface) and a lower surface (bottom surface) **projecting radially outwardly beyond an outward extent of said first and second portions** with said lower surface of said rib disposed along said downwardly facing surface and defining a continuing part of said downwardly facing surface, said rib terminating in a free end surface (pointed outer end forms transition between top and bottom surface) connecting said upper and lower surfaces. Independent claims 4, 18 and 19 include similar claim language.

For claim 5, Fehres discloses an open top plastic drum (1), comprising a drum body (1) having a chime portion (profiled upper rim 2) for receiving a removable cover (4), said chime portion extending from said sidewall so as to define an open top and including: a substantially radial first chime wall (orange portion which is the portion designated by circled numeral 1) projecting outwardly from said sidewall and having a bottom surface (bottom surface close to reference numeral 2), a substantially cylindrical second chime wall (blue portion which is the portion designated by circled numeral 2) directed upwardly from said first chime wall and having a lower portion contiguous with said first chime wall, with an inner edge (inside edge of orange portion) of the first chime wall extending radially inward of the entire second chime wall, and **an exterior circumferential rib** (yellow portion which is the portion designated by circled numeral 3

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and ridge 14) extending from the first chime wall below the second chime wall, and also **extending radially outwardly beyond an outward extent of said first and second chime walls**; a cover (4) having a peripheral chime receiving member (upper portion of profiled sealing edge 3 extending above sealing member 16, outside flange 7 and hook-shaped portion 11) that includes a circumferential flange (11) having an inner diameter larger than said second chime wall but less than said circumferential rib; and a retaining ring (13) having first and second legs (top and bottom horizontal legs, respectively) fixedly connected by an intermediate band (vertical portion), wherein said first leg engages an outer surface (outer surface of portion above sealing member 16) of said peripheral chime receiving member directly above said second chime wall, and wherein said second leg engages the bottom portion of said rib and said first chime wall directly below said second chime wall. Independent claim 10 includes similar language.

For claims 20-23, portion 6 of Fehres' lid is defined as the downwardly extending ring flange. When the lid is in a closed position, the downwardly extending ring flange is radially inwardly of and extends below an upper level of the collective body portion represented by the entire first portion, the entire second portion and the entire rib.

Claims 3 and 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hammes et al. ('943)(Hammes).

103 Rejections

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fehres in view of Hammes.

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Fehres discloses the invention except for the top surface of the rib being substantially parallel to the rib's bottom surface. Hammes teaches a rib wherein the top surface is substantially parallel to the bottom surface and it provides a substantially square shaped rib. It would have been obvious to modify the rib's shape to be substantially square shaped and to have a top surface substantially parallel to the bottom surface in order to provide a shape or contour which corresponds to the shape defined by the peripheral chime receiving member of the lid (which in Hammes is substantially horizontal and flat). Note that color coded Fig. 3 discloses the similarities of Hammes' structure to that of Fehres, the orange, blue and yellow portions correspond.

Claims 4 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammes.

Hammes discloses the invention except for a second portion, which defines an uppermost surface of the upper barrel edge, with an inner edge of the first portion extending radially inward of the entire second portion. It would have been obvious to remove portions of the upper barrel edge which extend upwardly of the second portion so that the second portion defines the uppermost surface of the upper barrel edge if such portion are deemed to be unnecessary. The portions which extend upwardly of the second portion (that is, portion 5) are not necessary because the lid continues to be held upon the container body by retaining ring (4) and the elimination of portion 5 would save plastic molding materials.

(11) Response to Argument

102 Rejections

Appellant argues that in general the disclosed upper rim structure of the present invention is different than the disclosed upper rim structure of Fehres and of Hammes. The examiner agrees with this statement and notes that differences definitely exist. The invention disclosed may be outstanding in its field, but the name of the game is the claim. It is the claims that measure the invention. When making a patentability determination, the claimed invention must be compared to the prior art. The claims do not differentiate the present invention from the Fehres and Hammes disclosures.

With specific reference to Fehres, appellant mentions that Fehres is silent with respect to “a rib projecting radially outwardly beyond an outward extent of the first and second portions.” As shown in color coded Fig. 1 and 2, the yellow portion representing the rib projects radially outwardly beyond an outward extent of the first portion (orange portion) and second portion (blue portion). The orange and blue portions similarly disclose the first and second chime walls, respectively.

There is no limitation that states that the exterior rib projects radially outwardly of every other part or portion of the upper barrel edge or that the exterior rib is the only outwardly projecting portion. Such limitations may preclude the presence of the outwardly projecting portion which is outwardly adjacent to the blue portion of Fehres.

With specific reference to Hammes, appellant mentions that Hammes is silent with respect to “an inner edge of the first portion extending radially inward of the entire second portion,” and “a rib projecting radially outwardly beyond an outward extent of the first and second portions.” As clearly shown in color coded Fig. 3, an inner edge of the first portion

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(orange portion) extends radially inwardly of the entire second portion (blue portion). The yellow portion representing the rib projects radially outwardly beyond an outward extent of the first portion (orange portion) and second portion (blue portion).

Appellant further notes that surface 18 that is advantageous for reliable gripping of the barrel with claw 66. Fehres and Hammes disclose similar surfaces equally gripable by a claw 66.

Dependent claims 6-9, 11-14, 16, 17 and 20-23 are not separately argued.

103 Rejections

Appellant argues the language of claim 5 for the 103 rejection of claim 15, the examiner refers to the 102 rejection response.

Appellant presents the examiner's rejection of claim 15 without the motivation statement as presented in the Office action mailed April 2, 2002 as paper No. 16. To provide a different shape one of ordinary skill in the art would have looked to other barrel edges and the configurations of barrels with lids and retaining rings to see what other shapes exist. Hammes has a generally square shape. Fehres' triangular shape could be modified to a square shape as taught by Hammes. This modification from a triangular shape to a square shape would then make the top surface of the rib substantially parallel to the bottom surface. The motivation is for providing greater strength in a certain region and to conform the barrel edge to fit with other barrel lid and retaining ring assemblies.

Appellant never argues the issue presented in claim 15, "the rib has a top surface substantially parallel to the bottom surface." It seems that appellant may deem that the top

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surface of Fehres is substantially parallel to the bottom surface and therefore, no modification of Fehres is necessary.

For the rejection of claims 4 and 19, appellant again argues language which doesn't pertain to the modification being made. The language of claims 3 and 18 are similar to the language of claims 4 and 19 in this respect and the examiner refers to the 102 rejection response.

Appellant argues the issue present in claims 4 and 19 (to remove the upper portion of the barrel edge) by stating that the examiner fails to appreciate the container features (since water tight sealing would be loss). The barrel lid and retaining ring all function even though a seal is not made, the barrel is still covered, the lid can still be remove to gain access then attached again to cover the barrel and the retaining ring can still be secured to prevent access.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Stephen J. Castellano

Primary Examiner


Art Unit 3727

sjc

July 10, 2003

Conferees

rah 

njn 

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APPENDIX

COLOR CODED FIGURE 1

United States Patent

Fehres et al.

[15] 3,696,962

Oct. 10, 1972

[54] **LIQUID SEALED CONTAINER**

[72] Inventors: Hans Fehres, Essen, Belgium; Lucas W. P. Boogert, Roosendaal, Netherlands

[73] Assignee: Van Leer (U.K.) Limited

[22] Filed: Dec. 10, 1970

[21] Appl. No.: 96,752

2,966,378	12/1960	Carpenter et al.....292/256.69
3,039,666	6/1962	Carpenter, Sr.292/256.69
3,057,537	10/1962	Pollick.....220/66 X
3,080,090	3/1963	Young220/60 R
3,149,747	9/1964	Burgess.....220/60 R
3,157,335	11/1964	Maier220/72 X
3,223,278	12/1965	Allen220/60 R
3,516,571	6/1970	Roper et al.....220/97 F X

[30] **Foreign Application Priority Data**

Dec. 12, 1969 Netherlands.....6918704

[52] U.S. Cl.220/60 R, 220/72, 220/97 E

[51] Int. Cl.B65d 43/10

[58] Field of Search.....220/60 R, 72, 74, 42 C, 97 E;
292/256.6, 256.61, 256.63, 256.65, 256.67,
256.69

[56] **References Cited**

UNITED STATES PATENTS

2,828,789	4/1958	Groendyk et al..220/60 R UX
2,866,940	12/1958	Lamb.....220/60 R X

Primary Examiner—George E. Lowrance

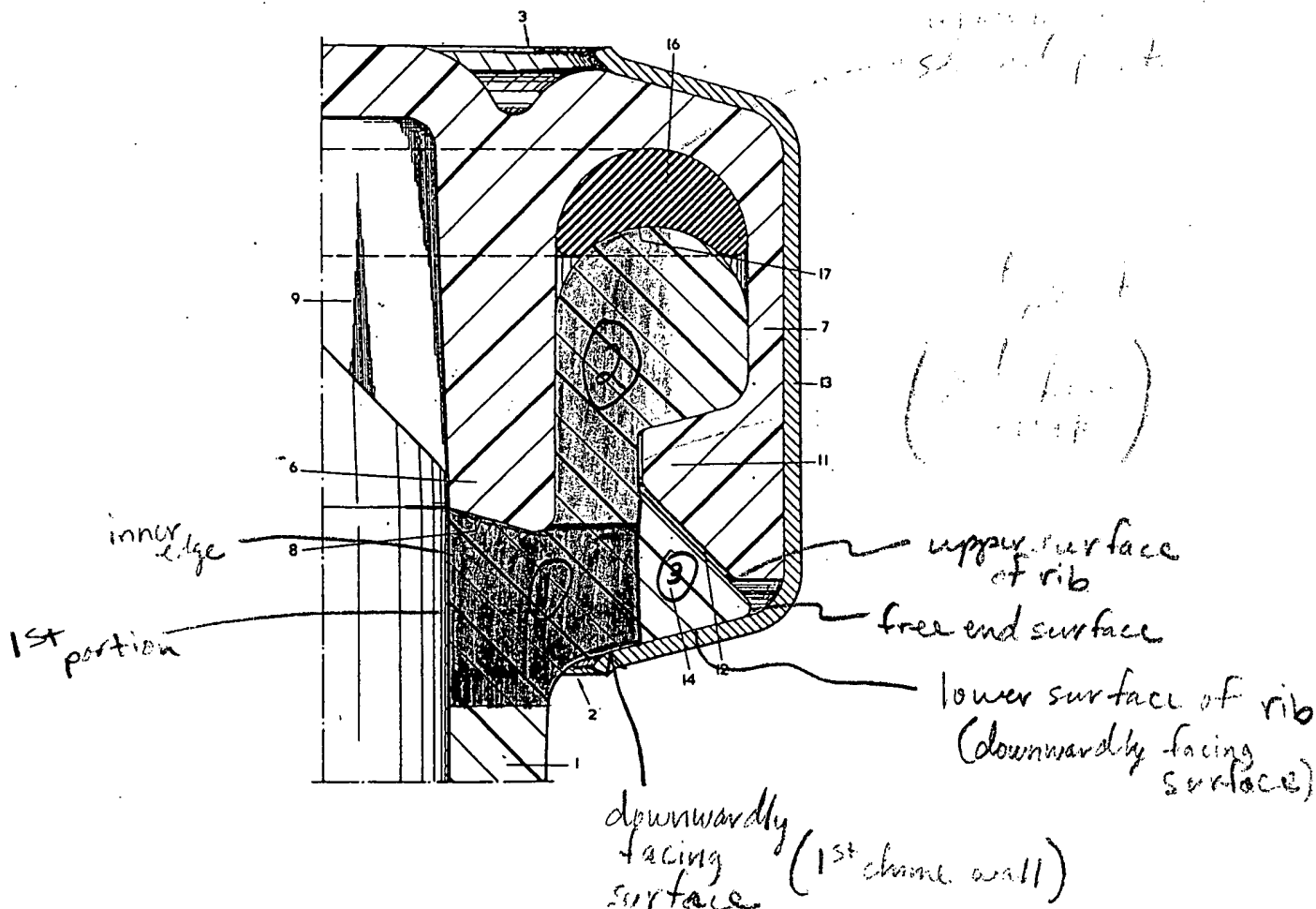
Assistant Examiner—James R. Garrett

Attorney—Stevens, Davis, Miller & Mosher

[57] **ABSTRACT**

A container having a liquid tight lid retained by a locking ring with a resilient sealing member held within a channel-shaped profiled edge. To prevent undue compression of the sealing member when other heavy articles are piled on top of a container, the inner periphery of the container has a recess engaged by the inner flange on the channel-shaped profiled edge of the lid.

6 Claims, 3 Drawing Figures



United States Patent

Fehres et al.

COLOR CODED FIG. 2

[15] - 3,696,962

Oct. 10, 1972

[54] LIQUID SEALED CONTAINER	2,966,378	12/1960	Carpenter et al.....292/256.69
[72] Inventors: Hans Fehres, Essen, Belgium; Lucas W. P. Boogert, Roosendaal, Netherlands	3,039,666	6/1962	Carpenter, Sr.292/256.69
	3,057,537	10/1962	Pollick.....220/66 X
	3,080,090	3/1963	Young220/60 R
[73] Assignee: Van Leer (U.K.) Limited	3,149,747	9/1964	Burgess.....220/60 R
	3,157,335	11/1964	Maier220/72 X
[22] Filed: Dec. 10, 1970	3,223,278	12/1965	Allen220/60 R
[21] Appl. No.: 96,752	3,516,571	6/1970	Roper et al.....220/97 F X

[30] Foreign Application Priority Data
Dec. 12, 1969 Netherlands.....6918704

[52] U.S. Cl.220/60 R, 220/72, 220/97 E
[51] Int. Cl.B65d 43/10
[58] Field of Search.....220/60 R, 72, 74, 42 C, 97 E;
292/256.6, 256.61, 256.63, 256.65, 256.67,
256.69

[56] References Cited

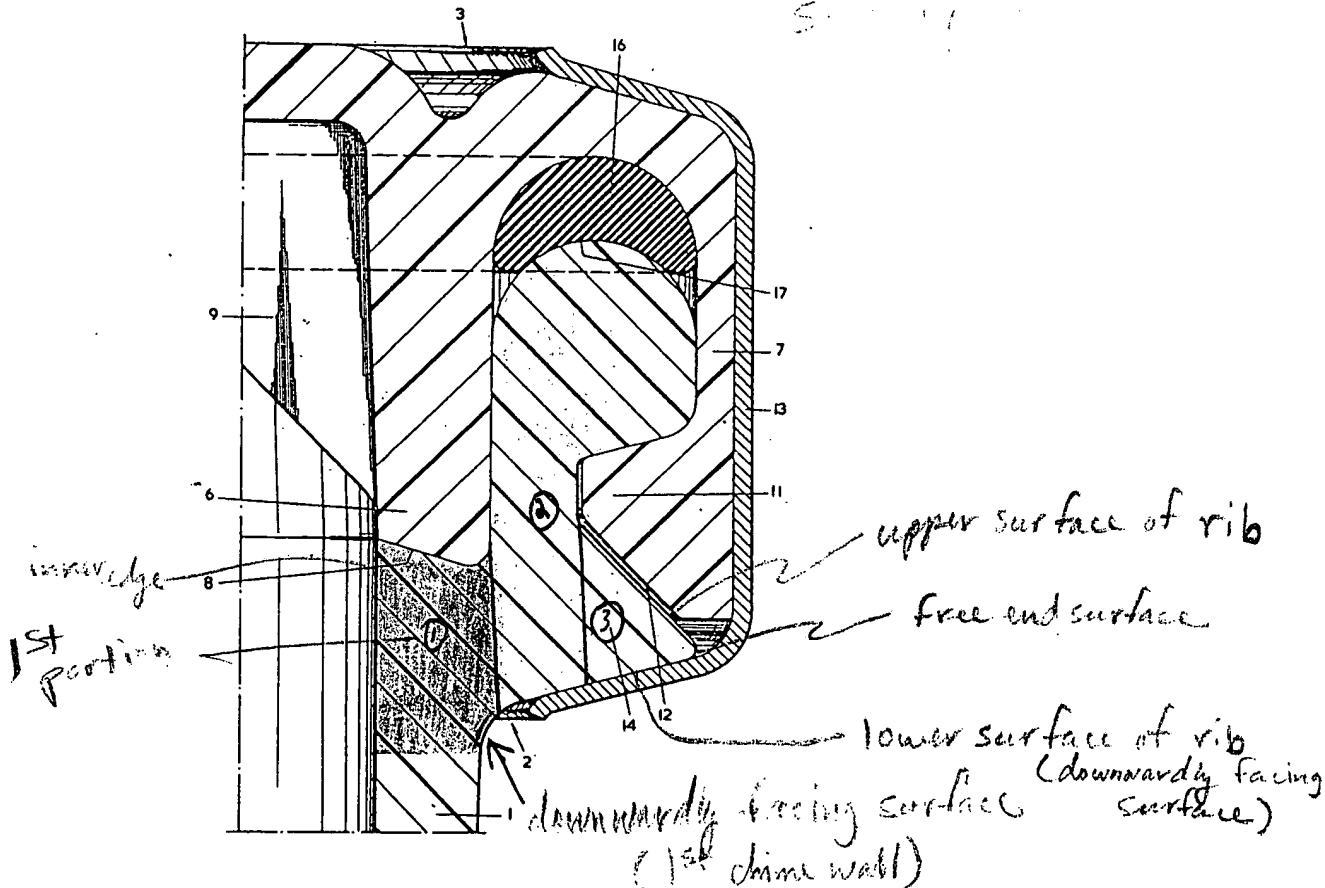
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2,828,789 4/1958 Groendyk et al..220/60 R UX
2,866,940 12/1958 Lamb.....220/60 R X

Primary Examiner—George E. Lowrance
Assistant Examiner—James R. Garrett
Attorney—Stevens, Davis, Miller & Mosher

[57] ABSTRACT

A container having a liquid tight lid retained by a locking ring with a resilient sealing member held within a channel-shaped profiled edge. To prevent undue compression of the sealing member when other heavy articles are piled on top of a container, the inner periphery of the container has a recess engaged by the inner flange on the channel-shaped profiled edge of the lid.

6 Claims, 3 Drawing Figures



[54] CONTAINER AND LID

[75] Inventors: Theo Hammes, Cologne; Alois Hoff, Brühl, both of Fed. Rep. of Germany

[73] Assignee: Mauser Kommandit-Gesellschaft, Brühl, Fed. Rep. of Germany

[21] Appl. No.: 913,032

[22] Filed: Jun. 7, 1978

Related U.S. Application Data

[63] Continuation of Ser. No. 701,870, Jul. 1, 1976, abandoned.

[30] Foreign Application Priority Data

Oct. 4, 1975 [DE] Fed. Rep. of Germany 2544491

[51] Int. Cl.² B65D 45/32; B65D 43/06; B65D 7/42

[52] U.S. Cl. 220/319; 220/320; 220/355; 220/72; 215/275

[58] Field of Search 220/319, 320, 321, 355, 220/72, 74; 215/275

[56] References Cited

U.S. PATENT DOCUMENTS

2,801,764	8/1957	Russell et al.	220/320
3,062,401	11/1962	Needham	220/320
3,510,023	5/1970	Ullman et al.	220/320 X
3,516,571	6/1970	Roper et al.	220/74 X
3,696,962	10/1972	Fehres	220/319
3,792,797	2/1974	Mrusek et al.	220/319 X
3,851,788	12/1974	Hammes	220/319
3,942,677	3/1976	Hagen et al.	220/304

Primary Examiner—Steven M. Pollard

Attorney, Agent, or Firm—Michael J. Striker -

[57]

ABSTRACT

A container which has a body portion, a neck portion and a radially outwardly extending flange intermediate and integral with the body and neck portions is blow-molded in a mold which has at least two mold elements one of which is mounted on the other for displacement in the axial direction of the mold. The mold elements have chambers which substantially conform in shape to those of the body and the neck portions of the container, the mold elements together defining an annular recess in which an intermediate portion is formed during the blow-molding operation, such portion having a pair of radially outwardly extending sections, and a connecting section extending between radially outward marginal portions of the radial sections. After the blow-molding operation, while the material in the mold is still in a flowable state, the mold sections are displaced relative to one another to press the radial sections toward and against one another to fuse the same into a unitary flange having an axial thickness substantially twice that of the neck and body portions. A lid of the container has an external wall which surrounds the neck portion and has an additional flange, and a ring-shaped connecting element urges the flange and the additional flange toward one another in the axial direction of the container to sealingly contact a sealing ring with the lid and the neck portion, respectively.

6 Claims, 3 Drawing Figures

